

D319guas

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

10 CR 476 (TPG)

6 ANTHONY GUARINO,

7 Defendant.
-----x

8 New York, N.Y.
9 March 1, 2013
10 3:30 p.m.

11 Before:

12 HON. THOMAS P. GRIESA

13 District Judge

14 APPEARANCES

15 PREET BHARARA
16 United States Attorney for the
17 Southern District of New York
18 JOHN ZACH
19 Assistant United States Attorney

20 MATHEW J. MARI
21 Attorney for Defendant

22 MATTHEW J. ROSENBLUM
23 Attorney for Defendant

D319guas

1 (In open court; case called)

2 MR. ZACH: Good afternoon, your Honor.

3 John Zach for the government.

4 MR. MARI: Your Honor, Mathew Mari and Matthew
5 Rosenblum for the defendant Anthony Guarino. We are ready to
6 be sentenced, your Honor.7 THE COURT: Have you gone over the presentence report
8 with your client?

9 MR. MARI: Yes, your Honor.

10 THE COURT: And I assume your position is set forth in
11 the sentencing memorandum, right?

12 MR. MARI: Yes, your Honor.

13 THE COURT: What would you like to add, please?

14 MR. MARI: Your Honor, Mr. Rosenblum, who came into
15 this case before the plea, and has been cocounsel with me, and
16 has handled all of the sentencing matters, would like to make a
17 statement to the court.

18 THE COURT: Of course.

19 MR. ROSENBLUM: Thank you, your Honor.

20 Your Honor, before I begin my remarks I just want to
21 say a couple thank yous. I'm Anthony's brother-in-law so
22 there's a reason why I'm here in this court and not being paid,
23 but Mathew Mari bears no relation to him and he's made all
24 these court appearances and done all this work, yeoman like
25 work in defense of my brother-in-law. I just want to thank him

D319guas

1 for that. He started out as a family friend helping in an
2 arraignment and he kind of got roped in, first, to help Anthony
3 and ultimately to help Judy and the whole family and I thank
4 him from the bottom of my heart.

5 I'd also like to thank AUSA John Zach who made a kind
6 of difficult situation for me -- I'm not in a habit of
7 representing family, loved ones -- he's been professional; he's
8 been courteous. We haven't always agreed, but it's always been
9 aboveboard. And I want to thank him because he's just given me
10 a great comfort in being able to do my job here.

11 Your Honor, when I married Georgette, who is in the
12 courtroom and sent the court a letter, in 1993, that's
13 Anthony's sister, Anthony did not attend the wedding. He was
14 in jail. Judy, a healthy Judy, attended the wedding. I had
15 spoken to Anthony on occasions after his incarceration. And I
16 think I got to understand him then. And I think I know him
17 now.

18 Your Honor, Judy's cancer -- Judy's diagnosis of
19 cancer in 2008 did for Anthony what six years of jail in the
20 late 1980s and early 1990s did for him. When she was diagnosed
21 with cancer, it humbled him. It brought him to his knees. It
22 made him hit rock bottom. And I think it was just one of those
23 life-changing events.

24 And that's two years before he was arrested on the
25 matters that bring us to court today. And that is why, your

D319guas

1 Honor, almost every other defendant in this case came to plead
2 guilty in a timely fashion, I think with the exception of
3 Barbarino, it was Anthony who went around -- not because he had
4 an expectation of getting a lower guideline or less criminal
5 history points or anything like that. He probably did hope --
6 and I spoke to Mathew Mari -- at one point he thought there was
7 a deal on the table. I spoke to AUSA Zach and there wasn't a
8 deal on the table. But Anthony diligently worked the
9 codefendants and said what's right is right. These victims
10 have been through enough. And I think it's uncontroverted that
11 it was he who brought about an almost global plea without
12 getting global credit. And that's not something the Anthony I
13 met, after I married Georgette, would have ever, ever
14 contemplated doing. He was much too proud.

15 I'd just like to point out that, as I'm sure the court
16 is aware, an acceptance of responsibility runs two ways in this
17 case. It runs to the victims -- and I would note that nobody
18 is here in attendance or has been given -- furnished letters
19 for this occasion. But that two letters were furnished to the
20 court, one by Alan Grossman, which I forwarded earlier this
21 week, I think. And one by a George W. who is a lawyer. And
22 both of them have indicated that Anthony in their opinion
23 should not be given jail time considering everything they knew
24 about him. And I could not put it in better words than they
25 have. And I'll rest upon the letters.

D319guas

1 But I've been doing criminal law for about 28 years.
2 I can't remember victims who have been swindled out of millions
3 of dollars ever coming to the aid of one of the people who is
4 alleged to have done, and who actually pled guilty, to a count
5 in the indictment regarding that.

6 I understand, your Honor -- I attended Mr. Kimmel's
7 sentencing. And I agree with the court that this is -- it's
8 kind of not a bad guideline for the amount of damage that's
9 been done. The minimum is 46 months to 57 on the maximum.
10 Considering people are out so much money, one can certainly say
11 that the guideline is better than other guidelines from a
12 defense point of view.

13 But, the crux of why we're here is: What about Judy?
14 In his memorandum that Mr. Zach, the government sent to me last
15 night, it says that Judy's situation is tragic, that Judy is a
16 victim of Anthony, that she is just one of his many victims.

17 But the other victims in this case are Anthony signing
18 IOUs and making promises of restitution. What about Judy? Why
19 do we turn our backs on Judy when she is perhaps the only
20 victim that he really can help?

21 If he is to be incarcerated, the likelihood of her
22 being able to live alone is not good. Probation indicated that
23 they -- I think they met with Judy for ten minutes on Monday
24 and they made a determination that she's very dependent on him
25 but they're not sure that -- whether or not she -- I think they

D319guas

1 made the statement all victims, all defendants' families
2 suffer. But the point is if she's a victim, shouldn't the
3 government be trying to help this victim as much as the
4 government is trying to help the other victims? Shouldn't the
5 government be saying to the defense counsel: Wait a second.
6 This guy is doing one -- even if we don't like him and even if
7 he's a liar and a cheat and a swindler and a this and a that,
8 isn't he doing one good thing? Why should we take him out of
9 her life and put her in a situation where she probably can't
10 take care of herself?

11 When probation went to her house for ten minutes she
12 was sitting on a couch and they thought she looked okay, I
13 guess. But it took him three hours to get her on the couch.

14 Your Honor, these are very proud people. Anthony
15 would never hide behind anybody to try to get out of jail.
16 That's not the Anthony of old and that's not the Anthony of
17 now. But he just has no other way to try to help his wife.

18 So, we come to criminal history now. In 1984 Anthony
19 was arrested -- convicted in 1984. He was actually sentenced
20 to three years in jail. Had he done that sentence when he was
21 slated to do it originally, then more than fifteen years would
22 have passed until the time of his next arrest and he would be
23 in criminal history III. But through a series of
24 not-so-complicated things, but basically because he appealed it
25 and it tagged on, and then he had another problem, it kind of

D319guas

1 got attenuated. And we're within, just within the fifteen-year
2 timeframe.

3 So I'm asking the court to please consider -- and it's
4 not -- I'm not saying he's the greatest guy in the world to be
5 going down from a history IV to a history III, but I think it's
6 appropriate for him to be a history III.

7 3553(a) permits the court to do -- to give more weight
8 to some factors than other factors in considering a variance.
9 Even if Judy's condition doesn't significantly deteriorate the
10 next several years -- she's had 29 or 30 lymph nodes removed.
11 She's got lymphedema in her leg. She's got a whole bunch of
12 other conditions that I can't even say or pronounce. And she's
13 got situations happening all the time. She went to physical
14 therapy one day and wound up having problems with her --
15 slipped disk or something like that. She had to get -- after
16 probation came to her this week, she had to go into
17 Sloan-Kettering -- into therapy. Then the next day she had to
18 go to Sloan-Kettering because something had to be removed from
19 her because something from the chemotherapy was clogging up and
20 her arteries could have got clogged and on and on.

21 If Anthony is not there, there's nobody that -- she
22 can't afford anybody to be at her beck and call for 24 hours.
23 And she certainly doesn't know anybody. And even with my
24 loving family, we just can't do it.

25 I just don't understand, your Honor, why -- I

D319guas

1 understand why the government might not agree to a variance or
2 to a departure. But I don't understand how they can say that
3 her situation is tragic, it's obvious it's going to get worse
4 without him, but it's his fault, he created the situation.

5 Well, he created -- that could be said of any
6 defendant and any victim. But he can fix her situation. It's
7 not like he's writing out an IOU for a million dollars to
8 someone else that will never mean anything. He can take her to
9 the doctor. He can get her up. He can dress her. He can comb
10 her hair, put her on the couch and make her look like she has
11 nothing wrong with her so that when probation comes they can
12 say she might be able to take care of herself. But it doesn't
13 mean that she can take care of herself. And I don't see how
14 the people don't see that.

15 And yeah, he did some bad things. And yeah, he didn't
16 learn his lesson. But I tell you he's different and he's
17 humbled and he's not perfect but for her, for what she needs,
18 he is perfect.

19 I asked Anthony to make a mini diary beginning Monday
20 of this week to document what he does each day for Judy, this
21 week, to help her function in a way that she can get by each
22 day. And I hope you did it. See, he even listens to me, your
23 Honor. I just want to thank you for your time.

24 THE COURT: Does the government have anything to add?

25 MR. ZACH: Very briefly, your Honor.

D319guas

1 The government submitted a sentencing memorandum,
2 filed last night. Look, there is no denying it's tragic and
3 that Mr. Guarino's wife is gravely ill. And it seems clear
4 that Mr. Guarino is a good and dutiful husband toward her.

5 THE COURT: Why don't you sit down because the
6 microphone doesn't reach very well.

7 MR. ZACH: It's clear, I think, that Mr. Guarino is a
8 dutiful and loving husband toward her. And it's certainly hard
9 to hear Mr. Rosenblum talk about these things because you know
10 he's part of that family. And they seem to be very close,
11 loving family.

12 But what the problem here is that Mr. Guarino has
13 spent most of his life doing this kind of thing. This is the
14 fourth federal fraud conviction that he's had. He's
15 essentially, since the early 1980s until today, been involved
16 in these types of scams. And in the wake of the scams, there's
17 lots of folks that have lost lots of money. And it's something
18 that needs to be deterred. And Mr. Guarino was the guy that
19 ran this boiler room in New York.

20 And I don't mean to take away from the fact that he's
21 a good husband and there's going to be real consequences to
22 this family were he to go to prison. But it's a situation that
23 Mr. Guarino made. And he made it after a lifetime of doing
24 this kind of thing. And while has tragic consequences on the
25 family, that's something that Mr. Guarino is going to have to

D319guas

1 live with because it's a decision he made when he decided to do
2 this sort of fraud. And it's horrible. And it's tragic. But
3 it's something that Mr. Guarino carries on his shoulders.

4 And while it may seem difficult and harsh for the
5 family, for his wife to have to go through this very difficult
6 part of her life with her husband away in prison, that is what
7 is required here because of the extent of the crime committed
8 by Mr. Guarino, because of his criminal history, and because he
9 is ultimately the one that made this decision.

10 THE COURT: Mr. Guarino, would you like to make any
11 statement.

12 THE DEFENDANT: Yes, sir. Thank you, your Honor.

13 MR. MARI: Judge, should he stand or sit?

14 THE COURT: It would be better to sit. These
15 microphones are a little awkward.

16 THE DEFENDANT: Thank you, your Honor.

17 I stand before you today ashamed that I betrayed the
18 trust people put in me by not disclosing the whole truth about
19 their investment which I solicited from them. I'm deeply sorry
20 for my actions. And I know I can never repair the damage I've
21 caused them. As you can see from the letters, from some of the
22 victims, I did try in some cases to do the best to address
23 their issues. The sad truth is that when I was doing what I
24 was doing, I justified it in my mind by wrongly thinking that's
25 just the way business is done on Wall Street. I was wrong.

D319guas

1 And believe me, I know it was wrong now more than ever.

2 I'm guilty of misleading investors and having them
3 suffer losses, which is shameful. For whatever it's worth, I
4 did not stockpile a lot of money or live a life of luxury
5 because of these crimes whatsoever. My family never benefited
6 from my actions but only suffered. I betrayed the trust of my
7 family, especially my wife Judy, who has been battling this
8 cancer for four-and-a-half years. She suffered a lot because
9 of the position I put her in and I put myself in.

10 I know you must punish me for my crime. But I ask for
11 mercy for my wife who has a disease that, by all means, is a
12 death sentence. I am all she has and she depends on me for
13 everything. A day doesn't go by that I'm not helping her with
14 her physical therapy, for compression for lymphedema, shopping,
15 cooking, pharmacy, traveling. When she has to go to physical
16 therapy, she cannot travel on public transportation. And the
17 handicap van that would be able to take her would take several
18 hours and because of her acute lymphedema and nerve damage of
19 18 months of chemotherapy, all of that would be for nothing
20 because of the damage of just the timeframe going back and
21 forth from physical therapy.

22 Our daughter, Judy's daughter, can't help because
23 she's been hospitalized three times in 2012 for a bipolar
24 disorder and has undergone fifteen treatments of electroshock
25 therapy and can't care for our granddaughter, which falls on my

D319guas

1 shoulders when these events happen. My granddaughter stayed
2 with us in 2012 more than six times for an excess of a week.
3 If I were to go to prison I can't help think how it would be
4 for Judy.

5 She also has a syndrome called Lynch syndrome. It's a
6 defective gene that causes multiple cancers in persons. Five
7 of her siblings have had different -- various different types
8 of cancers, as well as her mother and father, who both died
9 from this illness, as well as a niece. All they are doing here
10 is waiting for another cancer to turn up. And basically
11 they're waiting for the other shoe to fall.

12 Please do not be offended that I'm asking you for such
13 a sentence such as home confinement or probation. It's a lot
14 to ask. And if you grant this giant heartfelt request, I'll
15 turn my life around and do good for my family and for others.

16 I would never use Judy's illness and situation just to
17 avoid prison. I've done time, as you know, almost six years,
18 and never hid behind anyone. Sure, I didn't wanted to go to
19 jail, but I accepted it. My wife was healthy.

20 My concern is really for her. I do everything for
21 her.

22 Now, as Matthew said, he wanted me to do a brief
23 journal just to give you an overview of what I do.

24 On Monday, the day that probation came to our home at
25 9:15, we were up at 6:00 a.m. And what I do is I unwrap my

D319guas

1 wife's compression garments, give her a lymphatic massage, and
2 then I drive her to Memorial Sloan-Kettering for her daily
3 appointment physical therapy.

4 When both those treatments are completed at 11:45, we
5 go to a physical therapy doctor and get her medication. Then
6 we bring her home. I bring her home at around 2:00 p.m. She
7 takes her oxycodone, give her more lymph massage, 30 minutes,
8 rewrap, and bedtime medication at night.

9 Wake up at 4:30 -- on Tuesday we woke up at 4:30 and I
10 did the same procedure and this time had to bring her to
11 Memorial Sloan-Kettering for a surgery to remove a power port
12 that could create a problem because of it being backed up.

13 On the 27th, I'm up at 6:00 a.m. I unwrap the
14 garments. I do all the same techniques, the massage. I give
15 her all the medication. I cook for her. I shop for her. And
16 I put her to bed.

17 I've accepted my responsibility by pleading guilty.
18 And I did my best to encourage every codefendant to do the
19 same, which all have except one.

20 I live a very modest life. And my only concern is
21 caring for Judy and her daughter and our granddaughter.

22 I know it's your job to balance society's interest in
23 punishing me for my bad acts and balancing Judy's need to have
24 me attend to her on a daily basis.

25 I humbly accept my responsibility and accept my

1 D319guas

2 responsibility to society and to my wife and ask you to let me
3 continue to take care of her despite what I've done.

4 Thank you for listening.

5 THE COURT: This case presents grave difficulties.

6 The criminal conduct of fraud in connection with the sale of
7 purported securities or securities occurred beginning in about
8 2000 and going until the fall of 2010. Earlier there had been
9 convictions for the same thing and prison time. The operation
10 was really supervised by Mr. Guarino and in a sense he's most
culpable of the various defendants who have been before me.

11 The losses due to his conduct are very large, losses to
12 victims.

13 The sentence guidelines have a range starting with 46
14 months. That's three years and ten months. For this kind of
15 criminal conduct with that background, this is a very modest
16 penalty.

17 Now, I have no doubt of the seriousness of the
18 condition of Mrs. Guarino, whom I'll speak of as Judy because
19 that's the way Judy is -- that's the way all the papers do.
20 And I have no doubt about Judy's serious condition. I have no
21 doubt at all about the fact that the defendant Guarino is
22 spending great time and effort in caring for his wife and his
23 wife depends upon him greatly. But, the criminal conduct
24 occurred to some extent while this illness was manifesting
25 itself. The diagnosis occurred in 2008. And this criminal

D319guas

1 operation kept going until 2010.

2 What I'm now going to say is obvious but I'll say it
3 anyway. There was a clear way to avoid any danger of
4 imprisonment on top of what had been experienced some years
5 earlier and that was to stay clear of further criminal conduct.
6 That's the way to spare the families, to make sure that Guarino
7 was home, ready to care for his wife. That's the way to make
8 sure that that occurs. But Guarino did not do that.

9 Of course, the court has the deepest sympathy with
10 Judy and her need to be cared for by her husband. But, this
11 court also has a duty under the law and a duty to the public
12 who are not here. There's a public out there who needs to be
13 protected against fraud and boiler room operations. There is a
14 public that needs to be protected. And the court cannot forget
15 that. Severe losses were incurred. The court cannot forget
16 that. In my view, the guideline range or the sentence at the
17 bottom of the guideline range, at least, represents a moderate,
18 modest approach to the sentence in this case. Three years and
19 ten months. One can imagine a far more severe penalty for what
20 was done. But here we have a modest, moderate penalty in this
21 bottom of the guidelines 46 months.

22 A judge inevitably wishes to fashion a sentence, if
23 possible, which does not harm innocent people. And Judy is an
24 innocent person. But experience shows that that is not always
25 possible. And both experience and reasoning show that the real

15319guas

1 problem is the commission of the crime. That's what upsets the
2 normal, healthy lawful arrangement of lives. It's the
3 commission of the crime.

4 I feel that it is appropriate in carrying out my
5 responsibility under the law and in consideration of the
6 factors in Section 3553, principally the nature of the conduct,
7 it is my belief that a sentence of 46 months is an appropriate
8 sentence and that is the sentence that I impose.

9 Now, I wish to delay the surrender date not
10 indefinitely but for some reasonable period of time while care
11 for Judy is arranged. And in New York City and with the
12 institutions here and other ways there, of course, needs to be
13 provision for Judy's care. And consequently I will delay the
14 surrender date for three months until May 1, 2013 to allow that
15 to be done.

16 MR. ROSENBLUM: Your Honor --

17 THE COURT: Just one minute.

18 Yes.

19 MR. ROSENBLUM: Your Honor, Anthony has indicated to
20 me that --

21 THE COURT: I can't hear you.

22 MR. ROSENBLUM: Anthony has indicated to me that Judy
23 has a lymphedema laser procedure in July. Would it be possible
24 to go into August?

25 THE COURT: Yes, it would.

D319guas

1 MR. ROSENBLUM: Thank you.

2 THE COURT: August 1.

3 MR. ROSENBLUM: Thank you so much.

4 THE COURT: Was there a written plea agreement with
5 any waiver in it?

6 MR. ZACH: There was, your Honor.

7 THE COURT: Does this sentence --

8 MR. ZACH: A sentence at the low.

9 THE COURT: Does this create the circumstances for a
10 waiver?

11 MR. ZACH: It does, your Honor.

12 THE COURT: The defendant I'm sure understands that.
13 I need to -- I was concentrating on the term. But, of course,
14 there needs to be consideration of supervised release and a
15 special assessment.

16 This is a one count situation, right.

17 MR. ZACH: Yes, your Honor.

18 THE COURT: The prison sentence will be followed by
19 two years supervised release. And there will be a hundred
20 dollar special assessment.

21 MR. ZACH: Your Honor, it's also four hundred thousand
22 dollars in restitution. And the government will submit an
23 order to you.

24 THE COURT: All right. I'll sign the order.

25 That concludes our proceeding.

D319guas

1 MR. ROSENBLUM: Excuse me. One other matter. I'm
2 sorry but I didn't hear the court rule on the criminal history.

3 THE COURT: I agree with the criminal history
4 calculation in the presentence report.

5 MR. ROSENBLUM: Thank you, Judge.

6 MR. MARI: Your Honor, one other matter for the record
7 I don't think that we indicated on the record that defendant
8 would be allowed to self-surrender to a designated institution
9 by letter.

10 THE COURT: He will be permitted to do just exactly
11 that.

12 MR. MARI: Thank you very much, your Honor.

13 MR. ZACH: Thank you, your Honor.

14 (Adjourned)

15

16

17

18

19

20

21

22

23

24

25